

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TAVARIS MARKEITH BLANKS,

Defendant-Appellant.

UNPUBLISHED

August 17, 2010

No. 255257

Wayne Circuit Court

LC No. 03-013651-01

ON REMAND, AFTER REMAND

Before: HOEKSTRA, P.J., and WILDER and DONOFRIO, JJ.

PER CURIAM.

Our Supreme Court remanded this case to us for reconsideration of defendant's claim of a violation of the 180-day rule, MCL 780.131, in light of its decision in *People v Williams*, 475 Mich 245; 716 NW2d 208 (2006). *People v Blanks*, 480 Mich 914; 739 NW2d 872 (2007). We then remanded the case to the trial court for a determination whether the notice sent by the Department of Corrections (DOC) to the prosecuting attorney complied with the requirements of MCL 780.131(1). *People v Blanks (On Remand)*, unpublished opinion per curiam of the Court of Appeals, issued April 22, 2008 (Docket No. 255257). Having received the trial court's findings of fact, we affirm defendant's convictions.

In our opinion on remand, we concluded that the Supreme Court's remand order found a violation of the 180-day rule and that we were therefore precluded from considering plaintiff's argument that because *Williams* did not overrule *People v Hendershot*, 357 Mich 300; 98 NW2d 568 (1959), a "good-faith exception" to the 180-day rule continues to exist. *Blanks (On Remand)*, unpub op at 2-3. We also determined that because *Williams* requires strict conformity with the notification requirements of MCL 780.131(1), the Supreme Court's remand order directed us to review whether the notice sent by the DOC complied with the notification requirements. *Id.* at 3. However, because the parties had never addressed whether the notice conformed to the requirements of MCL 780.131(1), and because the notice was not included in the record, we remanded the case to the trial court for a "factual determination regarding whether the notice sent in this matter complied with MCL 780.131(1)." *Id.* Thereafter, the Supreme Court denied plaintiff's application for leave to appeal our opinion on remand. *People v Blanks*, 482 Mich 974; 754 NW2d 889 (2008). Consequently, our determination of what was decided and required by the Supreme Court's remand order is law of the case. *People v Kozyra*, 219 Mich App 422, 433-434; 556 NW2d 512 (1996).

On remand, the parties presented to the trial court a copy of the notice sent by the DOC to the prosecuting attorney. Based on the notice and the parties' statements, the trial court found that there was "an absence of proof" regarding whether the notice was sent by certified mail, but that the notice in all other aspects complied with the requirements of MCL 780.131(1).

We review a trial court's findings of fact for clear error. *People v Rodriguez*, 251 Mich App 10, 25; 650 NW2d 96 (2002).

MCL 780.131(1) provides:

Whenever the department of corrections receives notice that there is pending in this state any untried warrant, indictment, information, or complaint setting forth against any inmate of a correctional facility of this state a criminal offense for which a prison sentence might be imposed upon conviction, the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint. The request shall be accompanied by a statement setting forth the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time or disciplinary credits earned, the time of parole eligibility of the prisoner, and any decisions of the parole board relating to the prisoner. *The written notice and statement shall be delivered by certified mail.* [Emphasis added.]

The word "shall" indicates mandatory action. *People v Bell*, 276 Mich App 342, 347; 741 NW2d 57 (2007).

Plaintiff admitted to the trial court that it did not "know one way or the other" whether the notice was sent by certified mail. Plaintiff conceded that the notice contained defendant's place of imprisonment, a request for final disposition, and defendant's term of commitment. While the notice did not expressly refer to the time defendant already served, the time remaining to be served, the amount of good time or disciplinary credits earned, the time of parole eligibility, or any decisions of the parole board, these requirements, as stated by plaintiff below, did not pertain to defendant as defendant's term of commitment was life imprisonment. Counsel for defendant presented no proofs concerning the notice and agreed with plaintiff's statements. The trial court agreed with plaintiff's claims, and we find no clear error in the trial court's findings.

A notice sent by the DOC must comply with the requirements of MCL 780.131(1) to trigger the 180-day rule. *Williams*, 475 Mich at 255-256. It was defendant's burden to prove that the notice sent by the DOC complied with the statutory requirements. *People v Holt*, 478 Mich 851; 731 NW2d 93 (2007) ("[W]e affirm the result reached by the Court of Appeals that there was no violation of the 180-day rule We affirm that result because the defendant did not establish that the [DOC] caused to be delivered by certified mail to the prosecuting attorney the written notice, request, and statement as required by MCL 780.131(1)."). Based on the trial court's finding of the "absence of proof" regarding whether the notice was sent by certified mail,

defendant has failed to establish that the notice sent by the DOC complied with all of the requirements of MCL 780.131(1) and as a result the 180-day rule was not triggered. Accordingly, even though defendant was not brought to trial within 180 days after the prosecution received the notice of his incarceration that was sent by the DOC, defendant is not entitled to any relief.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder

/s/ Pat M. Donofrio